

Court No. - 20

Case :- WRIT - A No. - 4862 of 2023

Petitioner :- Ashok Kumar

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Housing And Urban Planning Lucknow And Another

Counsel for Petitioner :- Rakesh Bajpai

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.
2. Petition has been filed challenging order dated 5th January, 2022 rejecting petitioner's representation seeking upgradation of entries awarded in his annual character roll for the years 2012-2013, 2013-2014 and 2014-2015. Also under challenge is the order dated 4th August, 2022 again rejecting petitioner's representation with regard to same. Petitioner has also sought a direction to opposite parties to decide his representation by speaking and reasoned order before convening any departmental promotion committee for promotion on the post of Senior Planner in the department of Town and Country Planning, U.P.
3. It has been submitted that while petitioner was working on the post of Assistant Engineer in 2012-2013 and Executive Engineer thereafter in the aforesaid department, he was given the entries of good and very good for the aforesaid years but was deprived of the entry of excellent which in turn deprived him of a meritorious consideration for further promotion.
4. It is submitted that earlier with regard to aforesaid entries, government order dated 30th October, 1986 governed the field but after advent of judgment rendered by Hon'ble Supreme Court in the case of Dev Dutt versus Union of India reported in (2008) 8 SCC 725 as well as judgment rendered by this court in the case of State of U.P. versus Dev Raj Viswakarma, writ petition no. 479 (S/B) of 2010 it became mandatory upon the authorities to communicate all the entries whether poor, fair, average, good or very good to all the state employees in order to enable them to make a representation to higher authorities in terms of the U.P. Government Servants (Disposal of Representation against Adverse Annual Confidential Reports and Allied Matters) Rules 1995 with a further direction that if required, some amendment may also be made in the aforesaid Rules of 1995 in accordance with directions issued by Supreme

Court in the case of Dev Dutt versus Union of India (supra).

5. It is submitted that when the petitioner did not receive entry of excellent, he filed representation thereagainst which has been rejected by means of impugned order dated 5th January, 2022 placing reliance on the government order dated 30th October, 1986 to the effect that since the authorities who made the entries in the character roll of petitioner had already superannuated and were now unavailable, the aforesaid entries can not be interfered with. It is submitted that opposite parties have lost sight of the fact that in pursuance of directions issued by Hon'ble Supreme Court, the government order dated 1st February, 2013 was issued impliedly superseding the earlier government order dated 30th October, 1986 whereby now government employees have an option of filing a representation against all the entries below the entry of excellent. Learned counsel has drawn attention to the paragraph 6(2) of the government order dated 1st February, 2013 to submit that such entries made earlier can subsequently also be interfered with and revised even if earlier authority has superannuated. It is submitted that this is a provision in terms of government order dated 1st February, 2013 which has been overlooked by opposite parties while rejecting petitioner's representation.

6. It is further submitted that upon rejection of petitioner's representation, he made another representation indicating the error by the authorities and again placing reliance on government order dated 1st February, 2013. The said representation has also been rejected on the ground that this amounts to second representation and is therefore not entertainable.

7. Learned State Counsel on the basis of counter affidavit has also placed reliance on the government order dated 30th October, 1986 with submission that there is no right to review or approve the annual entries when the reporting/reviewing/approving authority is on leave, has resigned or is otherwise unavailable.

8. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is quite evident that earlier issue pertaining to revision of character roll entries of an employee were governed by the government order dated 30th October, 1986 but after judgment rendered by Supreme Court in the case of Dev Dutt versus Union of India (supra), it became incumbent upon the authorities to convey all the annual entries to an employee in order to enable him to make a representation thereagainst. It is in pursuance of such directions that government order dated 1st February, 2013 was

issued which implied superseded the earlier government order of 30th October, 1986 whereby now a new procedure was indicated. Paragraph 6 of the government order dated 1st February, 2013 has indicated the fact that now such annual character roll entries can be revisited even in the absence of person who made the entries.

9. A perusal of impugned order dated 5th January, 2022 makes it evident that it has completely ignored the subsequent government order dated 1st February, 2013 and has incorrectly relied upon the government order dated 30th October, 1986, which in fact stood impliedly superseded by the subsequent government order dated 1st February, 2013.

10. The second representation of petitioner has also been rejected vide order dated 4th August, 2022 without adverting to the aforesaid fact.

11. In the considered opinion of this Court, the opposite parties have completely lost sight of the fact as to which government order would be applicable with regard to grievance of petitioner. Once the government order dated 1st February, 2013 had been issued in compliance of directions issued by Supreme Court in the case of Dev Dutt versus Union of India (supra), there was no occasion for the opposite parties to have placed reliance on the superseded government order dated 30th October, 1986, the provisions of which even otherwise became obsolete.

12. In view of aforesaid, impugned orders dated 5th January, 2022 and 4th August, 2022 are quashed by issuance of writ in the nature of Certiorari. A further writ in the nature of Mandamus is issued commanding the opposite party No.2 i.e. Additional Chief Secretary, Department of Housing and Urban Planning Civil Secretariat, Lucknow to revisit the issue and to reconsider petitioner's representation dated 17th August, 2020 by reasoned and speaking order within a period of eight weeks from the date a certified copy of this order is served upon the said authority who shall pass orders taking into account the conditions indicated in the government order dated 1st February, 2013.

13. Resultantly, the petition succeeds and is allowed. Parties to bear their own cost.

Order Date :- 30.10.2023
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